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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,735	09/15/2003	Simon Buckley	1104-762	1490

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Woodard, Emhardt, Moriarty, McNett & Henry LLP
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,735

Applicant(s)

BUCKLEY ET AL.

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>19 Dec. 2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dwinell et al. US 6,726,048.

Dwinell '048, in the embodiment of figs. 1-5, teaches an overcap assembly, comprising a plug (6) to close a container opening, a sealing gasket (3) between the plug and the container, and an overcap comprising a top portion (21) defining a pair of score lines (27) partitioning the top into a center section (26) and first and second outer sections, a surrounding sidewall (22), oppositely-positioned flange sections (22a), a center post (23) axially extending from the center section, and tamper evident means, read by the Examiner to be the portion of the top wall comprising the base of the score lines, which fracture during the opening of the cap.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz et al. US 1,956,135 in view of Parish US 2,760,671.

Schmitz '135 teaches a bung closure, comprising an externally threaded, axially extending post (25).

Schmitz '135 does not teach two score lines.

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Parish '671 teaches tamper evidencing, comprising score lines (22) and (23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Schmitz '135, providing the score lines taught by Parish '671, motivated by the benefit of providing a means to destroy the outer cap and provide an additional means of tamper evidencing.

Examiner notes the addition of the score lines divides the cap into a center portion, two outer sections, and divides flange (23) into a pair of oppositely-positioned flanges.

5. Claims 2 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 as applied above under 35 USC 102(b) to claims 1 and 14, in view of Fernandes US 4,883,194.

Dwinell '048 does not teach the post having a series of external threads.

Fernandes '194 teaches a series of external threads (10) on a post (14) for engagement with the opening of a storage tank.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the posts and plug of Dwinell '048, providing the series of threads and providing internal threads to the plug, as taught by Fernandes '194, motivated by the benefit of strengthening the connection between the overcap and the plug.

6. Claims 3 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Fernandes US 4,883,194, as applied above under 35 USC 103(a) to claims 2 and 16, and in further view of Korn US 4,461,389.

Dwinell '048 does not teach a raised portion extending across the weakened score lines.

Korn '389 teaches raised means in figs. 4-5, comprising the word, "DRUGS," to indicate fracture of a score line.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Dwinell '048, providing the tamper indication taught by Korn '389,

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providing raised portion across the score lines, motivated by the benefit of providing an indication of tampering with the overcap.

7. Claims 4-5 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Fernandes US 4,883,194 and in view of Korn US 4,461,389, as applied above under 35 USC 103(a) to claims 3 and 17, and in further view of May US 5,893,475.

Dwinell '048 does not teach pins extending from the top portion.

May '475 teaches a means to prevent tampering comprising pins (10) which fracture upon rotation of the cap, causing the engagement of the pin legs (11) with abutments (15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overcap of Dwinell '048, providing the pins (10) of May '475, motivated by the benefit of preventing rotation of the overcap by providing an indication of tampering.

8. Claims 4-6 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Fernandes US 4,883,194 and in view of Korn US 4,461,389, as applied above under 35 USC 103(a) to claims 3 and 17, and in further view of Gach US 4,711,372.

Dwinell '048 does not teach pins extending from the top portion.

Gach '372 teaches a tamper evidencing means comprising a post (48) held to a removable cover by webs (66), and fit within a sleeve (44) to indicate a cap has been removed from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Dwinell '048, providing the post to the cap, and the retention sleeve taught by Gach '372, motivated by the benefit of providing tamper evidencing to indicate previous access to the associated container.

Examiner further notes it would be obvious and within ordinary skill to place a post on each of the outer sections of the cap of Dwinell '048, motivated by the benefit of increasing the visibility of the tamper evidencing. Furthermore, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 as applied above under 35 USC 102(b) to claim 1, in view of Korn US 4,461,389.

Dwinell '048 does not teach a raised portion extending across the weakened score lines.

Korn '389 teaches raised means in figs. 4-5, comprising the word, "DRUGS," to indicate fracture of a score line.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Dwinell '048, providing the tamper indication taught by Korn '389, providing raised portion across the score lines, motivated by the benefit of providing an indication of tampering with the overcap.

10. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Korn US 4,461,389 as applied above to claim 7, and in further view of May US 5,893,475.

Dwinell '048 does not teach pins extending from the top portion.

May '475 teaches a means to prevent tampering comprising pins (10) which fracture upon rotation of the cap, causing the engagement of the pin legs (11) with abutments (15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overcap of Dwinell '048, providing the pins (10) of May '475, motivated by the benefit of preventing rotation of the overcap by providing an indication of tampering.

11. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Korn US 4,461,389 as applied above to claim 7, and in further view of Gach US 4,711,372.

Dwinell '048 does not teach pins extending from the top portion.

Gach '372 teaches a tamper evidencing means comprising a post (48) held to a removable cover by webs (66), and fit within a sleeve (44) to indicate a cap has been removed from a container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Dwinell '048, providing the post to the cap, and the retention sleeve taught by Gach '372, motivated by the benefit of providing tamper evidencing to indicate previous access to the associated container.

Examiner further notes it would be obvious and within ordinary skill to place a post on each of the outer sections of the cap of Dwinell '048, motivated by the benefit of increasing the visibility of the tamper evidencing. Furthermore, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

12. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 as applied above under 35 USC 102(b) to claim 1, in view of May US 5,893,475.

Dwinell '048 does not teach pins extending from the top portion.

May '475 teaches a means to prevent tampering comprising pins (10) which fracture upon rotation of the cap, causing the engagement of the pin legs (11) with abutments (15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overcap of Dwinell '048, providing the pins (10) of May '475, motivated by the benefit of preventing rotation of the overcap by providing an indication of tampering.

13. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Gach US 4,711,372.

Dwinell '048 does not teach pins extending from the top portion.

Gach '372 teaches a tamper evidencing means comprising a post (48) held to a removable cover by webs (66), and fit within a sleeve (44) to indicate a cap has been removed from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Dwinell '048, providing the post to the cap, and the retention sleeve taught by Gach '372, motivated by the benefit of providing tamper evidencing to indicate previous access to the associated container.

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Examiner further notes it would be obvious and within ordinary skill to place a post on each of the outer sections of the cap of Dwinell '048, motivated by the benefit of increasing the visibility of the tamper evidencing. Furthermore, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,573,605	US 2,962,185
US 4,520,942	DE 3,637,644
US 4,489,841	GB 2,222,399
US 3,189,072	

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



Stephen K. Cronin
Primary Examiner